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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TODD HELLING,

Defendant and Appellant.

2d Crim. No. B267883
(Super. Ct. No. 2010029291)
(Ventura County)

Todd Helling appeals from judgment after an order revoking his postrelease community supervision (PRCS). (Pen. Code, § 3450 et seq.)¹ He contends the revocation procedures employed by Ventura County violated his right to due process because he did not have a *Morrissey*-compliant² probable cause hearing. We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

² *Morrissey v. Brewer* (1972) 408 U.S. 471 (*Morrissey*).

Factual Background

In 2011, Helling pled guilty to evading an officer (Veh. Code, § 2800.2, subd. (a)) in case number 2010029291 and possessing a controlled substance (Health & Saf. Code, § 11377, subd. (a)) in case number 2011034330. He was sentenced to two years state prison for each conviction, plus a two-year enhancement under section 12022.1, subdivision (b).

Helling was released in 2013 on PRCS following realignment. The Ventura County Probation Agency is his supervising agency. As a condition of release, he agreed to obey all laws, report to probation as directed, consent to drug testing, and not use or possess drugs or paraphernalia.

In February 2015,³ after reducing a felony count to a misdemeanor (§ 1170.18), the trial court transferred Helling's PRCS in case number 2011034330 to case number 2010029291.

On August 13, Helling was arrested for failing to report to probation, trespassing in a vacant residence, possessing Xanax and methamphetamine, and failing to comply with drug-testing requirements. This was Helling's second violation of PRCS.

On August 17, Senior Deputy Probation Officer Venessa Meza conducted an administrative probable cause hearing and concluded there was probable cause to believe Helling violated the terms of PRCS. Helling refused a waiver offer and requested a formal revocation hearing. On August 25, the probation agency filed a revocation petition. The hearing was set for August 27.

On the date of the hearing, Helling moved (through counsel) to dismiss the petition for revocation and for release

³ All future dates are in the year 2015.

based upon an alleged violation of due process. The trial court denied the motion to dismiss and heard the revocation petition. Helling submitted on the probation officer's report. The trial court found him in violation of PRCS and ordered him to serve 120 days in county jail.

Due Process Requirements

Revocation of supervised release deprives a person of a conditional liberty interest, and may only be had with due process protections. (*Morrissey, supra*, 408 U.S. at p. 482 [parole revocation]; *People v. Vickers* (1972) 8 Cal.3d 451, 458 (*Vickers*) [probation revocation].)

To conform to due process, revocation of conditional release requires a two-step process: (1) an initial determination of probable cause to justify temporary detention; and (2) a formal revocation hearing to determine whether the facts warrant revocation. (*Morrissey, supra*, 408 U.S. at p. 485; *Vickers, supra*, 8 Cal.3d at p. 456.) It is undisputed that the formal revocation hearing complied with *Morrissey* and *Vickers* in this case.

The Probable Cause Hearing

The probable cause determination is a "minimal inquiry," made near the place of arrest "as promptly as convenient after arrest." (*Morrissey, supra*, 408 U.S. at p. 485.) It need not be made by a judicial officer; it may be made by any qualified person "not directly involved in the case." (*Id.* at pp. 485-486 [probable cause determination for parole revocation may be made by a parole officer other than the officer who reports the violation or recommends revocation]; *Vickers, supra*, 8 Cal.3d at pp. 456-457.)

Helling contends that the probable cause hearing conducted by Meza was an "ex-parte process carried out by a

probation officer to secure a waiver of rights under section 3455, subdivision (a), and was not a true fact-finding probable cause hearing.” He argues that having a different probation officer than the one who drafted the report as a hearing officer “is immaterial” because “[b]oth probation officers are employed by an agency whose agenda is to obtain an early modification of supervision” But Helling offers no evidence in support of his argument.

Meza conducted a *Morrissey*-compliant administrative probable cause hearing at which Helling was present. Although there is no “Postrelease Community Supervision Advisement of Rights and Acknowledgment Revocations” form in the record,⁴ Helling was informed of right to counsel and notified of his violations. Helling refused the waiver offer and requested a formal revocation hearing. There is no evidence that he disputed or contested probable cause.

Morrissey expressly allows the use of other supervising agency officers in the role of independent probable cause hearing officers: “It will be sufficient, therefore, in the parole revocation context, if an evaluation of whether reasonable cause exists to believe that conditions of parole have been violated is made by someone such as a parole officer other than the one who has made the report of parole violations or has recommended revocation.” (*Morrissey*, *supra*, 408 U.S. at p. 486.)

⁴ Helling asserts for the first time on appeal that he was not provided the “Postrelease Community Supervision Advisement of Rights and Acknowledgment Revocations” form or advised of his rights associated with the probable cause hearing. The argument is forfeited.

Here, a different probation officer reported the violations and recommended the custodial sanction.

Helling contends that the PRCS revocation procedure violates Proposition 9, the Victims' Bill of Rights Act of 2008: Marsy's Law, which created section 3044 and provides that a parolee is entitled to a probable cause hearing no later than 15 days following his or her arrest for violating parole. (See *Williams v. Superior Court* (2014) 230 Cal.App.4th 636, 649-650.) We held in *People v. Byron* (2016) 246 Cal.App.4th 1009, 1017-1018, that PRCS is different from parole. Section 3044 does not apply to PRCS revocations which are governed by section 3455. Helling's argument that section 3455, as enacted as part of the 2011 Realignment Act, illegally "bypasses" Proposition 9 without a super majority vote of the Legislature is, therefore, without merit.

Helling Has Failed to Demonstrate Prejudice

Helling argues that his due process rights were violated at the probable cause phase, prior to the formal revocation hearing. He submitted at the revocation hearing and has served his sentence.

The denial of a *Morrissey*-compliant probable cause hearing does not warrant reversal unless the violation results in prejudice at the revocation hearing. (*In re La Croix* (1974) 12 Cal.3d 146, 154-155.) Helling makes no showing that any due process defect prejudiced him or affected the outcome of the PRCS revocation hearing. (*In re Winn* (1975) 13 Cal.3d 694, 698 [defendant has burden of showing prejudice]; *In re Moore* (1975) 45 Cal.App.3d 285, 294.) Because he was found in violation and has served the custodial sanction "there is nothing for us to

remedy, even if we were disposed to do so.” (*Spencer v. Kemna*
(1998) 523 U.S. 1, 18.)

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Donald D. Coleman, Judge

Superior Court County of Ventura

Wayne C. Tobin, under appointment by the Court of
Appeal, for Defendant and Appellant.

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